Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1697

COMMONWEALTH OF PENNSYLVANIA,
PETITIONER

v.

KEVIN WILLIAMS,
RESPONDENT

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# PETITIONER'S REPLY MEMORANDUM

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MARIANNE E. COX
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY

2400 CENTRE SQUARE WEST

PHILADELPHIA, PA. 19102

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## AMENDED STATEMENT OF JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO 28 U.S.C. §1257(3).[1]

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[1] DUE TO A CLERICAL ERROR, THE WRONG SECTION OF TITLE 28 IS CITED IN THE PETITION FOR CERTIORARI. RESPONDENT POINTS THIS OUT IN HIS ANSWER, BUT DOES NOT, AND CANNOT, CHALLENGE THE FACT THAT JURISDICTION DOES EXIST.

I. THE PENNSYLVANIA SUPREME COURT'S MECHANICAL APPLICATION OF THE EXCLUSIONARY RULE IS PROPERLY PRESENTED TO THIS COURT FOR REVIEW.

IN HIS BRIEF IN OPPOSITION TO CERTIORARI, RESPONDENT PROPOSES VARIOUS REASONS WHY THE PENNSYLVANIA SUPREME COURT'S APPLICATION OF THE EXCLUSIONARY RULE SHOULD NOT BE REVIEWED BY THIS COURT. NONE OF HIS ARGUMENTS WITHSTAND ANALYSIS. HE FIRST DISPUTE PETITIONER'S CLAIM THAT THE POLICE HERE ACTED IN FULL COMPLIANCE WITH THE LAW AT THE TIME OF RESPONDENT'S ARREST. DEFENDANT'S BRIEF, HOWEVER, IGNORES THE FACT THAT PRIOR TO RESPONDENT'S CASE, THE PENNSYLVANIA COURTS HAD NEVER RULED UPON THE PROPRIETY OF A WARRANTLESS ARREST IN A DWELLING AND HAD[2] REPEATEDLY UPHELD WARRANTLESS ARRESTS FOR FELONIES. INDEED, IN IT'S OPINION IN RESPONDENT'S CASE, THE COURT NOTED THAT

> WE HAVE NEVER BEEN CONFRONTED WITH THE ISSUE OF WHETHER AN ARREST WARRANT IS REQUIRED TO EFFECTUATE A VALID ARREST INSIDE THE ARRESTEE'S HOME ...

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2 THIS HAS ALWAYS BEEN THE LAW IN THE COMMONWEALTH. SEE E.G. WAKELY V. HART, 6 BINN 316, 319 (PA. 1814) (REJECTING A CLAIM THAT AN ARREST WARRANT SHOULD BE REQUIRED FOR A FELONY ARREST); COMMONWEALTH V. JOHNSON, 467 PA. 146, 153, 354 A.2D 886, 889 REARGUMENT DENIED (1976) (WHERE DEFENDANT CHALLENGED THE PROBABLE CAUSE FOR HIS WARRANTLESS ARREST IN HIS HOME, THE PENNSYLVANIA

(FOOTNOTE CONTINUED ON NEXT PAGE)



COMMONWEALTH V. WILLIAMS, PA. , 396 A.2D 1177, 1179 (1978), REARGUMENT DENIED (1979) (ALSO AT APPENDIX A, PETITION FOR CERTIORARI, AT 5A).[3]

THE CASES CITED BY RESPONDENT DO NOT SUPPORT HIS CLAIM AS THE ISSUE BEFORE THE COURT IN EACH CASE CITED WAS NOT THE PROPRIETY OF DISPENSING WITH A WARRANT, BUT WHETHER PROBABLE CAUSE EXISTED FOR THE ARREST.[4] NONE OF THE CASES INVOLVED ARRESTS IN A HOME. MOREOVER, IT IS ABSURD FOR RESPONDENT TO SUGGEST THAT LAW ENFORCEMENT AUTHORITIES SHOULD CHANGE THEIR OPERATING PROCEDURE EVERY TIME CONTRARY DICTA APPEARS IN THE DECISIONAL LAW.

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FOOTNOTE 2 CONTINUED

SUPREME COURT STATED, "JOHNSON'S ARREST WAS, OF COURSE, VALID IF IT WAS SUPPORTED BY PROBABLE CAUSE"). SEE ALSO COMMONWEALTH V. SHAW, 476 PA. 543, 552, N.7, 383 A.2D 496, 500, N.7 (1978) DECIDED OVER TWO YEARS AFTER RESPONDENT'S ARREST, WHERE THE PENNSYLVANIA SUPREME COURT NOTED THAT IT WAS NOT DECIDING WHETHER AN ARREST WARRANT WAS REQUIRED FOR AN ARREST IN A HOME.

3 COMMONWEALTH V. WILDER, 461 PA. 597, 337 A.2D 564 (1975) (PLURALITY OPINION); COMMONWEALTH V. JONES, 457 PA. 423, 322 A.2D 119 (1974); COMMONWEALTH V. HUNTER, 240 PA. SUPERIOR CT. 23, 360 A.2D 702 (1976) (ALLOCATUR DENIED).

4 COMMONWEALTH V. HUNTER, SUPRA ALSO INVOLVED THE PROPRIETY OF AN AUTO STOP AFTER A TRAFFIC VIOLATION.

NOR DOES THIS CASE INVOLVE THE INTERPRETATION OF A STATE PROCEDURAL RULE, AS RESPONDENT ATTEMPTS TO CHARACTERIZE THE COMMONWEALTH'S CITATION TO PA. R. CRIM. P. 101, PA. STAT. ANN. TIT. 19 (SUPP. 1978). THIS RULE, WHICH WAS PROMULGATED BY THE PENNSYLVANIA SUPREME COURT, EXPRESSLY AUTHORIZES WARRANTLESS FELONY ARRESTS, AND WAS MERELY REFERRED TO ALONG WITH RELEVANT CASE LAW IN SUPPORT OF THE PETITIONER'S ARGUMENT THAT THE POLICE IN THIS CASE WERE JUSTIFIED IN RELYING UPON THE WELL ESTABLISHED LAW IN THIS JURISDICTION AUTHORIZING WARRANTLESS ARRESTS FOR FELONIES.

SIMILARLY, THIS IS NO BASIS FOR RESPONDENT'S CONTENTION THAT THE PETITIONER FAILED TO FACTUALLY ESTABLISH IN THE TRIAL COURT, OR RAISE IN THE PENNSYLVANIA SUPREME COURT, THAT THE POLICE ACTED IN GOOD FAITH. IN THE LOWER COURTS, RESPONDENT WAS SEEKING TO CHANGE THE LAW, AND THERE WAS NO NEED FOR THE PETITIONER TO PROVE THAT THE POLICE RELIED UPON EXISTING CASE LAW AT THE TIME OF RESPONDENT'S ARREST. MOREOVER, THE PETITIONER DID RAISE THE GOOD FAITH OF THE POLICE IN THE PENNSYLVANIA SUPREME COURT, IN BOTH ITS BRIEF FOR APPELLEE, AND IN ITS APPLICATION FOR REARGUMENT. BRIEF FOR APPELLANT AT 8, 11-12, 23, 26-27; APPLICATION FOR REARGUMENT 2-9.



## II. THIS CASE PRESENTS A FACTUAL SITUATION DIFFERENT THAN THAT CONFRONTED BY THE COURT IN BROWN V. ILLINOIS OR DUNAWAY V. NEW YORK

RESPONDENT NEXT ARGUES THAT A GRANT OF CERTIORARI IS UNNECESSARY, BECAUSE THIS CASE IS "ON ALL FOURS" WITH BROWN V. ILLINOIS, 422 U.S. 590, 95 S. CT. 2254 (1975), AND HE SUGGESTS THAT THE PETITIONER IS ASKING THIS COURT TO OVERRULE BROWN, AND ARGUES THAT, IN ANY EVENT, THE TEST ARTICULATED BY THIS COURT IN BROWN FOR DETERMINING ATTENUATION OF TAINT WAS AT BEST DICTUM. BRIEF FOR RESPONDENT AT 9, 11. NONE OF RESPONDENT'S CLAIMS IS CORRECT.

FIRST, AS IS MORE FULLY ARTICULATED IN PETITIONER'S PETITION FOR CERTIORARI, THE ARRESTING OFFICERS IN BROWN PURPOSELY ARRESTED BROWN WITHOUT EVEN A PRETEXT OF PROBABLE CAUSE, IN A MANNER CALCULATED TO FRIGHTEN AND CONFUSE HIM, IN THE HOPE THAT UPON QUESTIONING HE MIGHT INCRIMINATE HIMSELF AND THEREBY JUSTIFY THE ILLEGAL ARREST. BROWN V. ILLINOIS, 422 U.S. AT 605, 95 S.CT. AT 2262. IN THE INSTANT CASE, RESPONDENT'S ARREST WAS SUPPORTED BY MORE THAN AMPLE PROBABLE CAUSE, AND THE POLICE JUSTIFIABLY RELIED UPON EXISTING CASE LAW THAT A WARRANTLESS ARREST FOR A FELONY WAS PROPER.

MOREOVER, THE TEST ARTICULATED BY THIS COURT IN BROWN FOR DETERMINING WHETHER A STATEMENT MADE AFTER AN ILLEGAL ARREST IS TAINTED, WAS NOT MERE DICTUM, AS IT WAS APPLIED BY THE COURT TO THE FACTS IN BROWN, AND WAS AGAIN EMPLOYED BY THE COURT IN ITS RECENT DECISION IN DUNAWAY V. NEW YORK, 47 U.S.L.W. 4635 (U.S. JUNE 5, 1979).

THE INSTANT CASE PRESENTS A FACTUAL SITUATION DIFFERENT THAN THAT INVOLVED IN EITHER BROWN OR DUNAWAY, IN THAT HERE THERE WAS NO ILLEGAL POLICE ACTION, AND THE ISSUE IS WHETHER RESPONDENT'S VOLUNTARY STATEMENT, MADE AFTER A PROBABLE CAUSE ARREST, SHOULD BE DEEMED TAINTED BY A SUBSEQUENTLY IMPOSED ARREST WARRANT REQUIREMENT.



## III. THERE IS NO BASIS FOR RESPONDENT'S CLAIM THAT THIS COURT SHOULD LIMIT THE GRANT OF CERTIORARI SOLELY TO APPEALS BY CRIMINAL DEFENDANTS.

RESPONDENT FINALLY ARGUES THAT THIS COURT SHOULD LIMIT ITS JURISDICTION OF APPEALS FROM STATE COURTS TO APPEALS TAKEN BY CRIMINAL DEFENDANTS. HOWEVER, SUCH A DECISION WOULD BE DIRECTLY CONTRARY TO THE INTENT OF CONGRESS IN ENACTING 28 U.S.C. §1257, AND IT WOULD UNNECESSARILY PERMIT A STATE COURT OF LAST RESORT TO RENDER DECISIONS BASED UPON FEDERAL CONSTITUTIONAL GROUNDS, WITHOUT ANY POSSIBILITY THAT THE STATE WHICH WAS ADVERSELY AFFECTED BY THE DECISION COULD SEEK REVIEW IN THIS COURT. SEE RICHARDSON V. RAMIREZ, 418 U.S. 24, N.13 AT 40-41, 94 S. CT. 2655, N.13 AT 2665 (1974). RESPONDENT'S SUGGESTION THAT THE PEOPLE, AS REPRESENTED BY THEIR STATE GOVERNMENT, SHOULD BE DENIED REVIEW BEFORE THIS COURT CANNOT BE JUSTIFIED ON ANY GROUND.

## CONCLUSION

FOR THE FOREGOING REASONS, THE COMMONWEALTH OF PENNSYLVANIA RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE DECISION BELOW.

RESPECTFULLY SUBMITTED,

MARIANNE E. COX
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY
2400 CENTRE SQUARE WEST
PHILADELPHIA, PA. 19102